

CANADA / JUDGMENT

Hamilton v. Prince George (City)

2020 BCSC 741

COURT

Supreme Court of British Columbia

DECIDED

13 May 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 741 Hamilton v. Prince George (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hamilton v. Prince George (City),

2020 BCSC 741

Date: 20200513

Docket: S1955922

Registry: Prince George

Between:

Roxanna Hamilton

Petitioner

And

Corporation of the City of Prince George

Respondent

Before: The Honourable Mr. Justice Tammen

On judicial review from: A decision of the Prince George City Council,

dated May 6, 2019

Reasons for Judgment

Counsel for Petitioner:

J. M. Duncan

Counsel for Respondent:

T J. DeSouza

Place and Date of Hearing:

Prince George, B.C.

November 4-5, 2019

Place and Date of Judgment:

Prince George, B.C.

May 13, 2020

Table of Contents

Introduction and Overview.. 3

Factual Background. 4

Reconsideration by City Council. 6

The Petition. 7

Legislative Framework. 8

Issues. 11

Analysis. 11

Standard of Review. 11

Procedural Fairness. 13

Substantive Review. 18

Conclusion. 24

Introduction and Overview

- [1] At issue in this Petition hearing is the refusal of the City of Prince George (the "City") to issue a business license to the Petitioner, Roxanna Hamilton, in 2019 for a dog breeding business Ms. Hamilton operated from her home.
- [2] Ms. Hamilton has lived at 3622 Hazel Drive since 1998. The home is in a residential neighbourhood, surrounded by other single family dwellings, in an area zoned as URS-1A: Urban Residential.
- [3] Since 2000, Ms. Hamilton has been breeding small dogs at her home and selling the puppies for profit. That money is her primary source of income. She is a registered breeder with the Canadian Kennel Club (the "CKC"), under the name Summer Knight Kennels.

- [4] In 2018, Ms. Hamilton submitted an application for a business license, which application was denied. That decision is not at issue in these proceedings.
- [5] In 2019, Ms. Hamilton once again applied for a business license. She provided a written submission, drafted by counsel, in support of her application. The thrust of her submission was that, although the current zoning bylaws (the "2007 bylaws") preclude her business operation, it should be permitted as a legal non-conforming use pursuant to the provisions of the Local Government Act, R.S.B.C. 2015, c. 1. Specifically, she submitted that her business was dog breeding, as distinct from a kennel, and as such was permitted in the earlier bylaws (the "1980 bylaws") governing "Home Occupation" or "Home Occupation, Special".
- [6] By letter dated March 6, 2019, the Respondent refused the application for a business license, citing only the 2007 bylaws. The letter did not address the primary argument of the Petitioner, relating to her business being a lawful non-conforming use.
- [7] On March 13, 2019, Ms. Hamilton sought a review of the March 6, 2019 decision. Prince George City Council ("Council") conducted a review at a special meeting of Council on May 6, 2019. By a vote of seven to one, Council decided to uphold the decision of the Planning and Development Department refusing to grant the business license.
- [8] The Petitioner now applies to the court for judicial review of the May 6, 2019 decision of Council.

Factual Background

- [9] Ms. Hamilton purchased 3622 Hazel Drive in 1998, and immediately started taking steps to commence breeding dogs. She purchased one Bichon Frise in 1998, and a second in 1999. In 2000, she applied to become a registered breeder with the Canadian Kennel Club ("CKC"). That organization, at the time of registration, assigned her business the name "Summer Knight Kennels". Ms. Hamilton registered her first litter of puppies with the CKC on August 24, 2000. She has been continuously breeding dogs at her home since that time.
- [10] Ms. Hamilton deposed in her affidavit filed on the review before Council that she made inquiries of a man in the planning department of Prince George City Hall sometime in 1998, and was advised by him that she did not require a business license to carry on a dog breeding business, and that such a business was not a "kennel". She said that man cautioned her against boarding other people's dogs, which would be a kennel operation.
- [11] Ms. Hamilton also deposed that after 1998 she contacted the City on numerous occasions and was repeatedly advised that she did not require a business license.
- [12] In July 2011, the City received a complaint about the number of dogs on the property, and performed an inspection of the premises. On August 12, 2011, the City wrote to Ms. Hamilton to advise her that the inspection had noted more than 20 dogs on site, and that breeding and boarding dogs at that scale was not permitted pursuant to zoning bylaws. The

letter advised Ms. Hamilton that her options were to either reduce the number of dogs on site to three or to relocate the business to an appropriately zoned property. There is no evidence of any response by Ms. Hamilton to that letter.

- [13] In early 2018, Ms. Hamilton attempted to apply for a business license through an on-line application system. When she could not find a category of license for dog breeding, she made a telephone inquiry and was advised that the City did not have a license for a dog breeding business.
- [14] In 2018, the City received several complaints, largely related to noise, about the number of dogs on Ms. Hamilton's premises. Ms. Hamilton was served with Bylaw Offence Notices in April and July, 2018. She retained counsel and disputed those Notices. At a hearing into the March allegations, that she kept or harboured more than 3 dogs over the age of 4 months, an adjudicator found in favour of Ms. Hamilton, and cancelled the violation ticket. The adjudicator made findings of fact that Ms. Hamilton's business was dog breeding, not a kennel, and as such no business license was required. Further, the adjudicator found that the exemption section of the relevant bylaw applied to Ms. Hamilton because she was a registered dog breeder.
- [15] That decision was rendered September 5, 2018. On September 27, 2018, Ms. Hamilton submitted a written application for a business license, which application was rejected by the City on October 3, 2018. The reason for the refusal was that dog breeding and boarding was not a permitted use of the property pursuant to the zoning bylaws.
- [16] On February 15, 2019, Ms. Hamilton again applied for a business license, which application was denied by letter dated March 6, 2019.
- [17] In support of the February 2019 application, Ms. Hamilton submitted her affidavit setting out relevant facts and a legal submission prepared by her lawyer's office. The thrust of the submission was that Ms. Hamilton had continuously operated her dog breeding business on the property for 20 years, and that under the 1980 bylaws the use was permitted based on the "Home Occupation" overlay provisions. As such, Ms. Hamilton's business should be "grandfathered" under the Local Government Act as a lawful non-conforming use, and the business license granted.
- [18] The refusal letter, written by a city planner, failed completely to address the submission concerning lawful non-conforming use, and only considered whether dog breeding and boarding was a permitted use under the 2007 bylaws.
- [19] On March 13, 2019, Ms. Hamilton sought a review of that decision by City Council, and a hearing was scheduled for May 6, 2019.

Reconsideration by City Council

- [20] On April 5, 2019, a City representative wrote a letter to both counsel for the City and for Ms. Hamilton setting out the procedure to be followed at the reconsideration hearing and deadlines for submission of evidence. Those deadlines were April 18, 2019 for counsel for the City and April 26, 2019 for counsel for Ms. Hamilton.
- [21] The April 5, 2019 letter also stated that at the conclusion of the hearing, City Council would "make a decision (with reasons)" to either uphold or overturn the refusal to issue a business license.
- [22] Both parties complied with the deadlines for submission of evidence. In addition, counsel for Ms. Hamilton submitted a legal submission setting out her position. Ms. Hamilton attended the hearing, and thus was available to be cross-examined on her affidavit. There was no request to cross-examine her. The matter was decided based on a written record and the oral submissions of counsel.
- [23] On May 6, 2019, the day of the hearing, counsel for the City provided Ms. Hamilton's counsel with a written submission and an extract from an online dictionary on which he intended to rely. Ms. Hamilton responded by submitting some additional dictionary extracts at the hearing. All of those extracts concerned the definition of "kennel" or "kennels".
- [24] There is no transcript of the reconsideration hearing, but the parties agree that the formal Minutes of the meeting are an accurate summary of what transpired. Those Minutes show a 90 minute meeting of Council at which the only matter discussed was the reconsideration at issue here.
- [25] Council did not provide formal reasons for the decision, but rather decided the matter by vote. That vote was seven to one in favour of upholding the decision to refuse the business license. The Minutes record a brief summary of reasons given by each council member for voting as they did.
- [26] On May 9, 2019, the City sent Ms. Hamilton written confirmation of the decision and directed her to cease dog breeding operations at the premises immediately or risk prosecution for bylaw violations.

The Petition

- [27] In her petition, filed May 17, 2019, Ms. Hamilton seeks the following:
1. An order of certiorari quashing the decision of City Council to refuse the business license;
 2. An order of mandamus, directing the City to issue the business license;
 3. In the alternative, an order remitting the matter to City Council for a further hearing with directions;
 4. A declaration that the business is a legal non-conforming use pursuant to the 1980 bylaws;

5. An injunction prohibiting the City from enforcing the relevant bylaws against the Petitioner pending the hearing of the petition; and
 6. Costs.
- [28] The Respondent City opposes all the relief sought by Ms. Hamilton and seeks its costs against her.
- [29] At the hearing, the claim for injunctive relief was abandoned.

Legislative Framework

- [30] Section 8(6) of the Community Charter, S.B.C. 2003, c. 26 grants a municipal council the general power to enact bylaws that regulate business. Section 15 authorizes council to regulate systems for granting permits, licences and approvals.
- [31] Section 60(1) of the Community Charter mandates that an application for a business licence must not be unreasonably refused. Section 60(5) provides for a review of such a decision by council.
- [32] A decision whether or not to issue a business license will inevitably be informed by relevant zoning bylaws. In this case, that necessitated consideration of both the 1980 bylaws and the 2007 bylaws, in conjunction with section 528(1) of the Local Government Act. Section 528(1) reads:
- 528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,
- (a) land, or a building or other structure, to which that bylaw applies is lawfully used, and
 - (b) the use does not conform to the bylaw,
- the use may be continued as a non-conforming use.
- [33] There was really no dispute that Ms. Hamilton's dog breeding business would not be permitted pursuant to the 2007 bylaws. Those bylaws defined "animal breeding and boarding" in part as "keeping, breeding or boarding four or more pets over the age of four months". Ms. Hamilton has more than four adult dogs on her premises. "Animal breeding and boarding" is expressly excluded from the types of activities envisaged by the various "home business" categories permitted in suburban residential zones. "Animal breeding and boarding" is only permitted in the larger rural zones, with properties in excess of four hectares.
- [34] However, the 2007 bylaws recognize the legitimacy of legal non-conforming uses as contemplated by the Local Government Act, in sections 1.6 and 1.9.
- [35] The crux of the submission of Ms. Hamilton is, and was, that her dog breeding business was permitted under the 1980 bylaws, and as such constituted a legal non-conforming use.
- [36] The relevant sections of the 1980 bylaw are these:

5.1 Unless otherwise specified, the following definitions shall apply. Any term not defined shall be as set out in the latest edition of the Cambridge Dictionary.

...

Home Occupation means any activity carried on for gain by a resident of a dwelling unit which is clearly incidental to the use of the dwelling unit for residential purposes, or to the residential use of the site occupied by the dwelling, provided that:

no person other than members of the family residing on the premises shall be engaged in such occupation;

the use of the dwelling unit or site for the home occupancy shall not occupy more than 25 percent nor more than 45.0 m² (484 square feet) of the gross floor area of the dwelling unit, whichever is the lesser;

there shall be no change in the outside appearance of the dwelling or other visible evidence of the conduct of such home occupation from any highway or adjacent property;

no goods are stored, displayed or sold outside of any building;

the use shall not generate traffic, parking or noise beyond what normally occurs in the applicable zoning district.

Home Occupation, Special means any occupation or business carried on for gain by a resident of a dwelling unit within such dwelling unit or an accessory building, the gross floor area of which does not exceed the gross floor area of the principal dwelling on the site, and may include the outdoor storage or repair of motor-vehicles or equipment connected with the business, or the storage of materials or supplies incidental thereto, provided that:

any outdoor storage or repair of materials or equipment shall be effectively screened with a sight-obscuring fence from any highway or adjacent property;

the use shall not generate traffic, parking, noise, vibration, glare, fumes, odours, or electrical interference beyond what normally occurs in the applicable zoning district;

no goods are stored, displayed or sold on the premises, except those produced or processed on the same site.

Kennel [Blank.]

10-5.2 USES PERMITTED.

Subject to all other provisions of this By-law, the following uses only shall be permitted in the RRS-1 District:

- (1) Agriculture
- (2) Allotment Garden

- (3) Dwelling, One-Family
- (4) Farmers' Market
- (5) Forestry
- (6) Kennel
- (7) Mobile Home
- (8) Nursery or Greenhouse
- (9) Travel Trailer, subject to the provisions of Section 14.1 of this By-law.

10-9.2 USES PERMITTED

Subject to all other provisions of this By-law, the following uses only shall be permitted in the URS-1A, URS 1-B and URS-1C Districts:

- (1) Dwelling, One-Family permitted only in the URS-1A and URS-1B Districts.
- (2) Mobile Home, permitted only in the URS-1B and URS-1C Districts.

10-56.1 INTENT

The intent of the SHO [Special Home Occupation] Overlay District is to accommodate small-scale, family-operated, home-craft industry or equipment storage, maintenance or repair services primarily in selected areas of AFO, RRS and SRS Districts, subject to limitations on scale, performance characteristics, commercial or industrial character, and visibility from bounding roads or adjoining property.

17.2 Subject to the restrictions as set out in the definition of Home Occupation, any Home Occupation use shall be permitted only in GB, AFO, RR, SR, URS or URT zoning district.

[37] The position of Ms. Hamilton is that her dog breeding business fits within the "Home Occupation" definitions, and thus is permitted in her neighbourhood, zoned URS-1A.

[38] The position of the Respondent is that the dog breeding business is a "kennel", and thus is permitted only in rural zoned areas, including RRS-1, but is not permitted in areas zoned URS-1A.

Issues

[39] The issues I must decide are as follows:

- 1. What is the appropriate standard of review?
- 2. Did Council breach its duty of procedural fairness?
- 3. Does the substance of the decision of Council withstand judicial review, on whatever standard is appropriate?

4. If not, what is the appropriate remedy?

Analysis

Standard of Review

- [40] At the hearing in early November, 2019, both counsel agreed that the standard for review was reasonableness. On December 19, 2019, the Supreme Court of Canada released judgments in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] and *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 [Bell Canada].
- [41] By memorandum to counsel on January 14, 2020, I invited any further submissions counsel wished to make regarding standard of review, in light of Vavilov and Bell Canada. I also invited counsel to make further brief submissions in writing on any other aspect of those two cases which might bear on the present decision.
- [42] On March 13 and 16, 2020, counsel submitted further written submissions.
- [43] The City submits that the reasoning in Vavilov affirms its position that the standard of review is reasonableness. In particular, relying on paragraphs 82 through 87, the City says that Vavilov mandates a considerable amount of deference to the decision under review, that of a municipal body empowered by the legislature to make the decision at issue.
- [44] Ms. Hamilton submits that I should review the decision applying a standard of correctness. In aid of that submission, counsel cites sections 622 and 623 of the Local Government Act and the recent case of *Edmonton (City) v. Edmonton (City) Subdivision and Development Appeal Board*, 2020 ABCA 7 [Edmonton City]. Neither, in my view, supports the proposition that correctness is the appropriate standard for review in this proceeding.
- [45] Ms. Hamilton submits that section 623 of the Local Government Act creates a statutory right of appeal that applies to this case. The Petition does not refer to that section of the Act. Section 623 creates a mechanism to apply to the Supreme Court to set aside a municipal bylaw or an order/resolution of a municipal council on grounds of illegality. It is not a general statutory right of appeal. Moreover, the present proceedings were not framed as an application pursuant to that section, nor were submissions made concerning illegality. In short, section 623 is not engaged at this hearing.
- [46] Edmonton City is cited as an example of a court applying the correctness standard of review post-Vavilov. That is so. However, the case concerned the direct application of section 688 of the Alberta Municipal Government Act, R.S.A. 2000, c. M-26. That section creates a right of appeal to the Court of Appeal on a question of law or jurisdiction. As such, one of the discrete exceptions noted in Vavilov applies.

- [47] In *Vavilov*, the Supreme Court of Canada stated that the standard of review analysis starts with a presumption that reasonableness is the applicable standard in all cases: para. 10. The presumption may be rebutted in two types of situations: first, where the legislature has indicated that it intends for a different standard to apply and second, where the rule of law requires that the standard of correctness apply: paras. 33, 53.
- [48] With respect to the first situation, the legislature may show that it intends for a different standard to apply in two ways: para. 33. First, it may provide a legislated standard of review. In British Columbia, this may be done by referencing the relevant provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. Second, the legislature may provide for a statutory appeal mechanism from an administrative decision maker to a court. In such circumstances, the reviewing court must employ appellate standards of review: para. 37.
- [49] In the second situation, the presumption of reasonableness may be rebutted where the rule of law requires courts to apply the standard of correctness for certain legal questions: para. 53. The standard of correctness applies to constitutional questions, questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between administrative bodies.
- [50] In the present case, there is no indication that the legislature intended for a standard other than reasonableness to apply; there is no legislated standard of review or statutory appeal mechanism. Similarly, this is not a situation where the rule of law requires the standard of correctness. Council is an administrative body interpreting its home statutes and bylaws enacted pursuant to those statutes. The applicable standard of review is reasonableness.

Procedural Fairness

- [51] Ms. Hamilton submits that Council breached its duty of procedural fairness in three respects. These are:
1. Council received new "evidence" in the form of the online dictionary definition of "kennel" outside the time frame for disclosure of such evidence. In particular, Ms. Hamilton says she was unable to adequately respond to this latterly disclosed evidence given its extremely late disclosure to her.
 2. One member considered his own knowledge of the residential neighbourhood, based on his visit to the area pre-hearing, in reaching a decision, without providing counsel for Ms. Hamilton to address that evidence.
 3. One member made adverse comments about Ms. Hamilton's credibility, despite the fact that Respondent's counsel elected not to cross examine Ms. Hamilton on the content of her affidavit.

- [52] Respondent's counsel conceded, and I find, that Council did owe Ms. Hamilton a duty of fairness during the entirety of the hearing process. However, in my view none of the alleged transgressions, individually or in combination, amount to a breach of such duty, certainly not one of such magnitude that the decision is impugned.
- [53] The content of the duty of fairness is variable and "depends on an appreciation of the context of the particular statute and the rights affected": *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 22. In determining the content of the duty, the court must consider a number of factors: the nature of the decision, the nature of the statutory scheme, the impact of the decision on the individual affected, the legitimate expectation of the individual challenging the decision, and the administrative agency's choice of procedure.
- [54] Ms. Hamilton submitted that the level of procedural fairness required here was similar to that required in court proceedings. That submission is primarily based on the potential impact of the decision on her. Ms. Hamilton says the decision to refuse a business license has rendered her unemployed. Thus, she submits that the type of procedures used in administrative hearings conducted by professional regulatory bodies may be appropriate.
- [55] I do not agree that the decision at issue is akin to one that decides whether an individual will be permitted to engage in a chosen profession, or will be suspended or otherwise precluded from practicing her or his profession. The decision here simply means that Ms. Hamilton may not carry on a dog breeding business on the current scale at her home. She can reduce the number of adult dogs on site or relocate the business to appropriately zoned premises. She is not rendered unemployed as a consequence of Council's decision.
- [56] What was required in the circumstances was an opportunity for a hearing, at which Ms. Hamilton could present her case, in whatever form she chose, for the relief she sought. She bore the burden of persuading Council that she should be granted a business license as a lawful non-conforming use. Clearly, the initial decision to refuse the business license did not consider her submissions in that regard. It was incumbent on Council to do so. In considering that central issue, Council was free to adopt whatever procedures suited the type of hearing, provided that Ms. Hamilton had a full opportunity to be heard, and to respond meaningfully to evidence and submissions presented by opposing counsel.
- [57] Against that backdrop, I will consider the concerns raised by Ms. Hamilton.
- [58] The most serious of the complaints is that related to late disclosure of the dictionary definition. Counsel for the Respondent only provided Ms. Hamilton's counsel with the dictionary extract on the day of the hearing. Counsel was then left to scramble to put together some materials in response. Nonetheless, I am satisfied that no actual unfairness was visited on Ms. Hamilton as a result.

- [59] I cannot find that the late presentation of the dictionary definition on which counsel intended to rely constituted late disclosure of evidence. Dictionary definitions are interpretive aids, akin to case authority or legislation, not evidence. Also, it could not have been a surprise to Ms. Hamilton or her counsel that such aids would feature at the hearing. Fundamental to her position was that her business was not a "kennel", a term that was not defined in the 1980 bylaw. Pursuant to the interpretation section of that bylaw, the latest edition of the Cambridge dictionary would govern.
- [60] I will address the arguments related to substantive reliance on the online definition of "kennels" when I consider the substance of Council's decision. For present purposes, the simple point is that both parties would have known that it was open to them to attempt to persuade Council of the merits of their proposed characterization of the business by reference to dictionary definitions. I can see nothing unfair about the timing of disclosure by Respondent's counsel. Ms. Hamilton's counsel was able to put some other dictionary definitions before Council for its consideration. Council considered all the material in its deliberations, and reached its decision based on all the evidence and submissions.
- [61] Nor do I view the comments of one member of Council concerning his visit to the neighbourhood as breaching the rules of procedural fairness.
- [62] The councillor in question, Mr. Krause, is reported as saying that "the current non-conforming use of the property to breed dogs is impacting the neighbours". Councillor Krause then noted that he had visited the subdivision, that the properties are close together and that any large number of dogs would affect quality of life in the neighbourhood.
- [63] There was evidence before Council of several noise complaints made by a neighbour or neighbours of Ms. Hamilton. Those same reports noted the presence of a large number of adult dogs on the property. Also in evidence was a schematic drawing of the neighbourhood, from which it appeared that the houses were quite close together.
- [64] Ms. Hamilton's affidavit was silent as to the scope of her breeding operation, and in particular, the number and breeds of adult dogs routinely present. Implicit in her submission was the presence of more than four adult dogs.
- [65] It is against that evidentiary backdrop that the comments of Councillor Krause must be considered. The first noted statement appears to be only a comment on the complaints concerning excessive noise. It can be seen as a fair inference to be drawn from those reports.
- [66] As for the site visit by Councillor Krause, I see nothing improper. It would have been better if he had raised the issue squarely with counsel for Ms. Hamilton during argument, and invited comment or response. However, his failure to do so does not rise to the level of procedural unfairness.

- [67] Those deciding municipal questions such as this one will always be themselves members of the community. Depending on the size of the municipality, many or all council members may be well acquainted with the literal and figurative lay of the land about which they are making decisions. The visit to the neighbourhood by one councillor is not akin to a juror in a trial doing investigations outside the courtroom setting. Nor is it similar to a judge inappropriately considering evidence not part of the record, or taking judicial notice of something about which notice should not be taken.
- [68] The character of the neighbourhood is always a consideration for Council in deciding what uses are permitted on premises. The size of properties and proximity of the houses to one another feature greatly in the overall zoning regime. I infer that Councillor Krause meant that the "houses" were close together when he apparently said the "properties" were close together. That inference could be drawn from the schematic diagram.
- [69] The balance of the comments is really a statement of the obvious: the noise inevitably associated with a large number of adult dogs would have greater impact on neighbours in subdivisions with smaller lots than in rural areas with larger lots. There was no evidentiary contest concerning the nature of this neighbourhood. It was not a rural area. Councillor Krause likely put himself in a better position to draw the inference by his visit to the neighbourhood, but no better than a councillor who by happenstance was familiar with the neighbourhood either because they lived there or because it was on their regular commuting route. Such familiarity could not disqualify the councillor as a decision maker.
- [70] Finally, I turn to the comments of Mayor Hall concerning credibility. This point was raised in the Petition, albeit under a different heading, and was not addressed at any length in submissions. As I understand it, the crux of the argument is that it was unfair to question Ms. Hamilton's credibility, specifically her account of being advised by City staff that no license was required, when that evidence was not challenged through cross examination.
- [71] The impugned comment appears to be an afterthought, or at most a secondary reason for voting to uphold the refusal of a business license. At its core, the comment is merely an observation that it is difficult to ascribe much weight to Ms. Hamilton's assertion that she was advised she did not require a license because of her inability to identify the person who so advised her. Mayor Hall was the last member of Council to vote. His comments could not have impacted other councillors.
- [72] Cross examination of Ms. Hamilton would not have altered the evidence, nor likely the view of Mayor Hall concerning that evidence. If Ms. Hamilton knew the name of the employee, she would have stated it in her affidavit. In any event, I do not view those comments as central to the deliberations of Mayor Hall.
- [73] In summary, I find that the Respondent did not breach the duty of procedural fairness owed to Ms. Hamilton. Ms. Hamilton was afforded appropriate participatory rights in the proceeding and was not prejudiced by what she alleges were deficiencies.

Substantive Review

- [74] Before addressing Ms. Hamilton's challenge to the substance of the decision, I must address the approach on judicial review to the assessment of Council's reasons for its decision. Council did not provide formal reasons, and Ms. Hamilton does not argue that such were required. The parties agree that I can consider the material that was before the Council and the Minutes in assessing the reasonableness of the decision.
- [75] The Supreme Court of Canada, in *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, held that municipal councils are generally not required to give formal reasons, and that the reasons for their decisions "are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": para. 29.
- [76] Vavilov confirmed that central premise, and added the following:
- [137] Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, e.g., *Catalyst*; *Green*; *Trinity Western University*. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations, and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli*.
- [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

- [77] With that in mind, I will conduct a "robust" review of the reasonableness of Council's decision. Central to that review is a consideration of the actual decision made by Council. That decision was to decline to issue a business license to the Respondent. The underlying rationale for the decision was that the business sought to be licensed was not permitted in the neighbourhood because of zoning restrictions.
- [78] As noted, the parties agreed that the 2007 bylaws do not permit a dog breeding business of the magnitude seen here in Ms. Hamilton's residential neighbourhood. Ms. Hamilton bore the burden of persuading Council that her business should be recognized as a lawful non-conforming use as per the Local Government Act and as such "grandfathered" into the current scheme. She was thus required to persuade Council that the dog breeding business was permitted under the 1980 bylaws. Her argument centred on the "home occupation" provisions of those bylaws.
- [79] Counsel for the Respondent argued that the business was a "kennel" and as such was not permitted in an area zoned URS-1. His position was that a kennel was only permitted in the areas specifically mentioned in the bylaw, the agricultural and rural residential zoning districts.
- [80] It could not possibly have been lost on Council and the parties that the principal rationale for restrictions concerning permissible locations for any business that involved large numbers of adult dogs is the attendant noise. Indeed, even the requirements for the "home occupation" designation mandate that the business not generate noise "beyond what normally occurs in the applicable zoning district".
- [81] The Petitioner says there was clear evidence of compliance with that requirement. I am far from satisfied in that regard, as it seems was Council. Ms. Hamilton's affidavit was silent on that point. There was some evidence, albeit not detailed nor well-developed of recent noise complaints from neighbours.
- [82] In considering the impact of zoning bylaws on its ultimate decision, Council would certainly have had in mind the importance of preserving the essential character of the neighbourhood, so as to maximize property values and ensure peaceful enjoyment of property for all residents. As was noted in *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494:
- [14] In interpreting zoning or land use bylaws, one must have regard to their general purpose. That purpose was described in *I. M. Rogers, Canadian Law of Planning and Zoning* (Toronto: Carswell, 1973), which was cited with approval in *Whistler (Resort Municipality) v. Miller*, 2001 BCSC 100, 20 M.P.L. R (3d) 128 at para. 51, *aff'd* 2002 BCCA 347, 32 M.P.L.R. (3d) 29, as follows:

The principal purpose of zoning regulations, as with restrictive covenants, is to preserve property values by prohibiting uses which are believed to be deleterious to neighbourhoods mainly residential in character. People living in an area of single family homes naturally want the same

type of homes in the district, that is, a use that is compatible. They want to preserve the amenities of their locality. Thus from the standpoint of the rate payers it is the status quo that is sought to be maintained and build up residential areas which are figuratively rimmed with "keep out" signs. Industry, always an unwelcome intruder in a residential community, also favours a zoning wall that bars residential and other incompatible encroachments.

- [83] In addition, municipal councils are not courts; when councillors vote, they may take into account the public interest and political considerations: see 377050 B.C. Ltd. v. Burnaby (City), 2007 BCCA 162 at para. 14.
- [84] It is against that backdrop that an assessment of the reasonableness of the ultimate decision must be undertaken.
- [85] I begin with the argument concerning the interpretation of "kennel". I cannot find anything unreasonable in the approach taken by Council.
- [86] The bylaw mandated that Council look to the "latest edition of the Cambridge dictionary". A reasonable interpretation of "latest" is "most current". Counsel for the Respondent presented the most current version of the Cambridge online dictionary. While bibliophiles might prefer a hard copy dictionary, in the 21st century online dictionaries are commonly used. There is nothing inherently wrong with that practice. Thus, the definition which Council considered was in accord with the requirements of the bylaw.
- [87] I likewise find nothing inappropriate in Council interpreting "kennel" to mean "a place where people leave their dogs to be taken care of while they are away, or a place where dogs are bred".
- [88] The Petitioner submits that the primary definition of "kennel", indeed the only one in British parlance, is "doghouse" or "a small shelter for a dog to sleep outside". When the British speak of the former establishment, it is "kennels" (i.e. plural). According to both the Cambridge and Oxford English dictionaries, only in the United States is the singular "kennel" used to describe both a small doghouse and a place where dogs are boarded or bred.
- [89] I cannot say Council erred in giving effect to the common American usage of the word "kennel." In Canada, we often intersperse U.S. and British spellings and usages. Indeed, the material before me contains both the British and American spellings for the noun "licence" or "license". The pleadings follow the Minutes of the Council meeting, and other correspondence from the City, in using the American spelling. The Community Charter uses the British "licence."
- [90] In addition, the Interpretation Act, R.S.B.C. 1996, c. 238, s. 28(3) renders insignificant the usage of singular versus plural in any provincial enactment.

- [91] Finally, the interpretation placed on "kennel" by Council accords with both common sense and modern rules of statutory interpretation. The bylaw could not have been referring only to a small shelter, or outdoor doghouse, for a single dog. Indeed, that was not the distinction advocated by the Petitioner. Rather, at all times, Ms. Hamilton sought to distinguish between a place where dogs are boarded while their owners are away and a place where dogs are bred. That distinction appears nowhere in the dictionary definitions.
- [92] I have also considered Ms. Hamilton's submission that Council should have looked to a 1980 dictionary definition of "kennel" in deciding the issue. That would have been the "latest" definition at the time the bylaw was drafted. Counsel submits that it is a notorious fact that meanings of many words change over time. Given that fact, it would be unfair to apply a modern definition. Ms. Hamilton may have been in compliance at one time, and have become non-compliant simply because of a semantic shift.
- [93] This argument might have some attraction if there was any evidence to support the notion that the meaning of "kennel" in fact changed over time. There is no such evidence. The Oxford dictionary, for instance, at least as far back as a 1995 edition, lists as the first definition "a small shelter for a dog." The second definition is the same "place where dogs are boarded or bred," with the caveat regarding pluralization. It appears that the definition of "kennel" has remained relatively constant for several decades. There is no reason to think that it was any different in 1980, or when Ms. Hamilton commenced breeding dogs, in 1999, than at the time of the hearing.
- [94] It was entirely reasonable for Council to have interpreted the word "kennel", as used in the 1980 bylaw, to mean a place where dogs are boarded, bred, or both. The presence of a large number of dogs is what informed the zoning restriction to agricultural or rural areas.
- [95] Ms. Hamilton also submits that it was incumbent on Council to conduct a detailed exercise of statutory interpretation to determine if her business, even if it was a kennel, nonetheless qualified as a "Home Occupation" and thus was permitted in the URS-1A zone. I disagree. It was reasonable for Council to conclude that a kennel could only be operated in the zones where such usage was specifically permitted.
- [96] Council was not required to examine the interrelationship among sections 5, 10-56 and 17 of the 1980 bylaw, as suggested by the Petitioner. Nor was Council required to decide if the uses set out in section 10-9 were "clearly subordinate" to section 17.2, the blanket section dealing with "Home Occupation use".
- [97] It was reasonable for Council to conclude that kennel use was only permitted in the zones specifically set out in the bylaw. That approach is certainly consistent with the decision of *Burns Lake (Village) v. Krause*, 2007 BCSC 730. In that case, the court upheld the applicant's interpretation of its own zoning bylaws that a hairdressing business did not qualify as "home occupation" because "hairdresser" was covered by "personal service establishment". Such businesses were permitted in different zones than those where home occupations were permitted.

- [98] In that case, the court found that the interpretation of the municipality meant that no part of the bylaw was rendered "ineffectual or superfluous". That same reasoning applies here.
- [99] At the hearing before Council, the Petitioner posited a particular interpretation of the bylaw, one which would lead to a conclusion that the business was permitted as a lawful non-conforming use. One councillor of eight accepted that argument. The others did not. It is clear from the entirety of the record, including what each councillor said about the reasons for their vote, that Council was alive to the issues as presented, and gave the matter earnest consideration. I cannot conclude that the decision of Council not to issue a business licence to the Petitioner was unreasonable.
- [100] Given those findings, it is unnecessary for me to consider remedies.

Conclusion

- [101] The petition for judicial review is dismissed.
- [102] The Respondent is entitled to costs at Scale B.
- "Tammen J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/07/2020BCSC0741.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hamilton-v-prince-george-city-2020>

Prepared on 26 October 2026 · Esheria